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Unitary is Alive and Kicking in The Commonwealth

As a part of the generational legislation on Kentucky tax passed last April via 2018 HB 486, the General Assembly for the first time in history enacted formal, mandatory unitary combined reporting (MUCR) as a required method of compliance for purposes of the Kentucky corporation income tax.

MUCR was a last-minute addition by the House Republican-led Legislature, introduced and passed in the House and the Senate on one day, the actual last day of the Session. Ultimately becoming law without the signature of Republican Governor Matt Bevin, unitary filing became law on January 1, 2019.

Since last May, a concerted effort has been made to reverse Kentucky's adoption of MUCR. Some lobbying groups going so far as to predict its total repeal in open forums, with the 2019 Regular Session now concluded, mandatory unitary combined filing in Kentucky remains the law. This notwithstanding significant effort by multiple trade groups, business coalitions, and individual corporations.

So let's take a snapshot of where things stand presently on group filing methods for corporations doing business in Kentucky, as enacted in 2018, and as modified by Kentucky 2019 HB 354 and HB 458. First, mandatory combination is a required method of compliance filing in Kentucky for those corporations meeting the definition of a unitary business. As noted, MUCR for the first time is authorized and required by statute. KRS 141.202(2)(f) provides as follows as to what a unitary business is:

"Unitary business" means a single economic enterprise that is made up either of separate parts of a single corporation or of a commonly controlled group of corporations that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this section, the term "unitary business" shall be broadly construed, to the extent

permitted by the United States Constitution.

For any corporation *not* falling within the above definition, separate return compliance filing is mandatory. Multiple adjustments to the group composition were added by 2019 HB 354 and HB 458.

An optional filing method, in lieu of MUCR, is also available, albeit on a mid-term elective basis. KRS 141.209 authorizes any corporation that otherwise would be required to file under the MUCR method to irrevocably elect for a period of 48 months (amended in 2019 from 96 months to 48) a consolidated return compliance filing. This method would utilize the U.S. affiliated group base of such businesses as the Kentucky compliance filing.

Some history should also be addressed so as to fully understand what these methods mean and how we came to be where we are. As to unitary, until 1995, pursuant to Kentucky Supreme Court Decision, unitary filing was an available method under common law to utilize corporate income tax compliance filings in Kentucky. As set forth in prior writings, see ["STN 7.16.18 The Unitary Filing Method In Kentucky The Lazarus Effect" State Tax Notes](#) (July 30, 2018), the history of how the unitary method came to be, and applicable authorities surrounding same was addressed by the author.

Suffice it to say Kentucky has had a checkered past as to the unitary filing method!

Watch for administrative guidance coming from the Department of Revenue now that the Legislature has spoken and unitary remains the law in the Commonwealth of Kentucky.

In the meantime, if you have questions about any of the issues raised above, you can contact me ([Mark F. Sommer](mailto:msommer@fbtlaw.com); msommer@fbtlaw.com) or any member of [Frost Brown Todd's State and Local Tax Group](#) – providing *Tax Law Defined*[™].

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